

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
CONDITIONAL USE PERMIT (#FCU-14-04)
EVERGREEN CHAMBER OF COMMERCE
APRIL 17, 2014**

A report regarding a request by the Evergreen Chamber of Commerce for a conditional use permit to allow for multiple principal uses on a single lot. The Evergreen Chamber of Commerce is requesting the permit to allow for the permanent placement of a kiosk on the south side of the property at the corner of Montana Highway 35 and U.S. Highway 2. The property is zoned 'B-3 Community Business' and 'Evergreen Enterprise Overlay.' and is within the Evergreen Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on May 6, 2014 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed land use is not located within the advisory jurisdiction of a Land Use Advisory Committee.

B. Board of Adjustment

This space is reserved for an update regarding the May 6, 2014 Flathead County Board of Adjustment review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant

Evergreen Chamber of Commerce
PO Box 5604
Kalispell, MT 59903

ii. Leaseholder

Kmart Corporation
Attn: Real Estate Asset Management
c/o Sears Holding Corporation
3333 Beverly Road
Hoffman Estates, IL 60179

B. Property Location and Size

The property in which the multiple principle uses will be located is approximately 8.5 acres in size and is located on the northwest corner of the intersection of Montana Highway 35 and U.S. Highway 2 (see Figure 1 below). The property can be legally described as Tract 9D located in Section 04, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property highlighted in yellow.



C. Existing Land Use(s) and Zoning

The subject property is zoned 'B-3 Community Business' and 'Evergreen Enterprise Overlay.' The B-3 zone is a district intended to, *"provide areas for the development of congregated community shopping areas, to serve the range of a number of neighborhoods of a major segment of the Planning Area. This district should be a business center and not a strip development."* The Evergreen Enterprise Overlay is defined as, *"An interim zoning district to temporarily overlay all existing B-2 General Business or B-3 Community Business zoning along the Evergreen commercial corridor with one additional permitted use."*

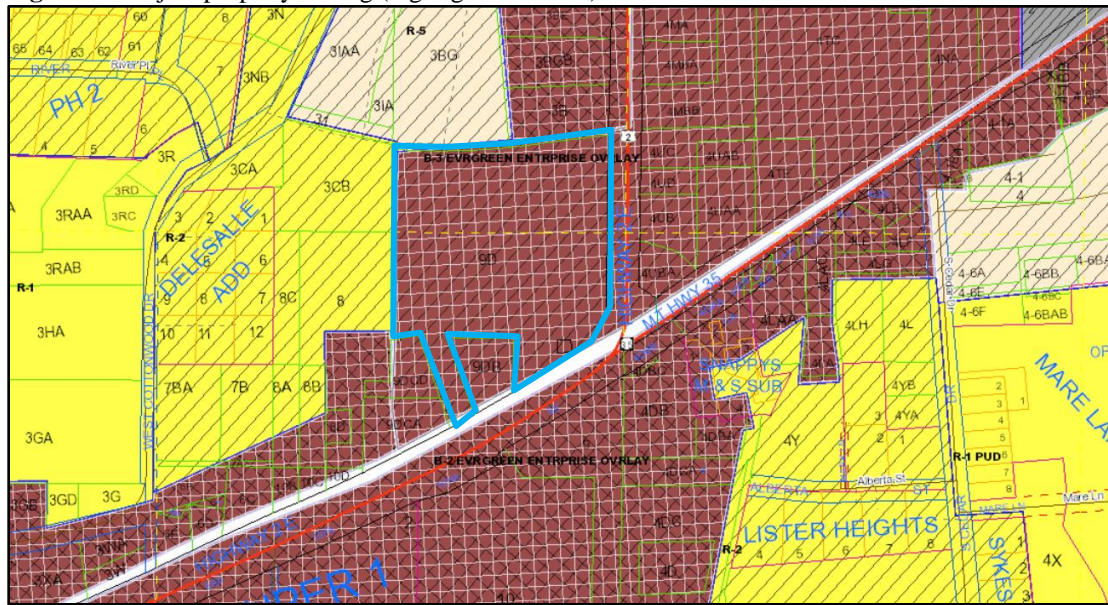
The property is covered by a building and a paved parking lot and is located within the Evergreen Zoning District. The subject property is currently used for a big box store with a kiosk located on the south side of the property in the parking lot. The applicant previously applied for and was granted an Administrative Conditional Use Permit for the placement of a temporary structure on April 10, 2013 (FACU-13-02). The permit was valid for one year and expired on April 10, 2014.

D. Adjacent Land Use(s) and Zoning

The subject property is surrounded by businesses and residential zoning. The properties to the east are zoned B-3/Evergreen Enterprise Overlay, the properties to the northeast and south are zoned B-2/Evergreen Enterprise Overlay. To the west of the subject properties are properties zoned R-2 and B-2/Evergreen Enterprise Overlay, and to the northwest is R-5.

Many of the neighboring properties are built-out with a variety of business such as restaurants, sporting goods stores, and pawn shops. To the northwest of the subject property is a mobile home park. The properties immediately to the west are undeveloped and appear to be forested.

Figure 2: Subject property zoning (highlighted in blue)



E. Summary of Request

As previously stated, the applicant was granted an Administrative Conditional Use Permit for the placement of a temporary structure (FACU-13-02). The permit was valid for one year and expired on April 10, 2014. The Evergreen Chamber of Commerce is now applying for a conditional use permit for multiple principal uses in order to permanently place the kiosk on the subject property.

Pursuant to Section 3.03.030(3) of the Flathead County Zoning Regulations (FCZR), *“Except as otherwise specified in these regulations, only one principal use shall be allowed per tract of record in the following zones: AG-80, AG-40, AG-20, SAG-10, SAG-5, R-2.5 and R-1 through R-5, RA-1, and B-1. Multiple uses may be allowed on single lots in other zoning districts upon the issuance of a Conditional Use Permit.”*

F. Compliance With Public Notice Requirements

Notification was mailed to property owners within 150 feet of the subject property on April 17, 2014, pursuant to Section 2.06.040(3) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the April 20, 2014 edition of the Daily Interlake.

G. Agency Referrals

Referrals were sent to the following agencies on March 26, 2014:

- Montana Department of Transportation
 - Reason: The property is located on a U.S. highway and has the potential to impact MDT facilities.
- Flathead County Solid Waste (FCSW)
 - Reason: The property is located within the department’s jurisdiction and has the potential to impact county facilities.
- Evergreen Fire Department

- Reason: The property is located within the department's jurisdiction and has the potential to impact Evergreen Fire Department response times.
- Evergreen Water and Sewer
 - Reason: The property is located within the department's jurisdiction and has the potential to impact Evergreen Water and Sewer facilities.
- Flathead City-County Environmental Health Department
 - Reason: The property is located within the department's jurisdiction.
- Flathead County Weeds and Parks Department
 - Reason: The property is located within the department's jurisdiction and new construction could lead to the development of weeds on the subject property.
- Bonneville Power Administration
 - Reason: The BPA has requested a copy of all agency referrals.

III. COMMENTS RECEIVED

A. Public Comments

No written public comments have been received to date regarding the conditional use permit request. It is anticipated any individual wishing to provide public comment on the proposal will do so during the public hearing scheduled for May 6, 2014. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
 - Comment: "In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within this area. BPA does not have any objections to the approval of this request at this time." Email dated March 31, 2014.
- Flathead City-County Health Department
 - Comment: "As proposed, the proposal would require no additional review. Should the kiosk change to a structure, this development would require further review through the Sanitation in Subdivisions Act. The parcel has an existing Certificate of Subdivision Approval (EQ# 01-2217) for one (1) commercial building. We have no comments at this time as proposed development will not affect water, wastewater, or storm water drainage on this property." Letter received April 10, 2014.
- Flathead County Solid Waste District
 - Comment: "The District views no negative impact with solid waste issues at this time. The District requests that all solid waste generated at the proposed location be hauled by a private hauler. Evergreen Disposal is the licensed (PSC) Public Service Commission licensed hauler in this area." Letter dated April 3, 2014.

- Evergreen Water and Sewer District
 - Comment: “The District has no comment on the proposed conditional use permit for the Evergreen Chamber of Commerce. They do not want to connect to our water or sewer and the location of the kiosk poses no problem for us.” Email dated March 28, 2014.
- Montana Department of Transportation
 - Comment: “I do not have any comments regarding this proposal.” Email dated April 3, 2014.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

A. Site Suitability

i. Adequate usable space

The information kiosk is located on the southeast corner of the property and placed on the existing pavement. The kiosk is 10 feet 3 inches wide by 16 feet long with a total area of 164 square feet. The main portion of the building is approximately 201 feet wide by 436 feet long with an attached garden center that is 66 feet wide by 108 feet long. The total area of the building is 94,858 square feet. The total area of the lot is approximately 370,260 square feet. The existing building and kiosk cover about 24.5% of the lot. Permitted lot coverage is not applicable within the B-3 zone.

The setbacks for B-3 are 20 feet for front and side corner, 5 feet for side and 15 feet for rear. Additionally, there is a further setback of 10 feet from Highway 2 for all structures. The kiosk and the building appear to meet the setbacks within the B-3 designation. Based on lot coverage, setback requirements and current building size there appears to be adequate usable space on the property to accommodate multiple principal uses.

ii. Adequate access

There are three paved approaches via U.S. Highway 2 for the subject property. U.S. Highway 2 is a paved, five lane highway approximately 60 feet wide. Two approaches are located on the east side, one designed for right-in/right-out and the other provides for full ingress and egress. The third approach is on the south side of the property off Highway 2 also allows for full ingress and egress. Comments from MDT state, “I do not have any comments regarding this proposal.”

iii. Absence of environmental constraints

According to FEMA FIRM Panel 30029C1810H, the subject property is located in a Zone AE, which is classified as an area that has 1.0% annual chance flood (within the 100-year floodplain). The current Firm Panel went into effect on June 18, 2013, prior to the map revision the subject property was mapped as Zone X. Zone X is classified as an area of 0.2% annual chance flood on FEMA FIRM Panel 30029C1810G. The kiosk and building are both grandfathered structures, as they were built in compliance with the floodplain management

regulations in effect at the start of construction and the applicant is not proposing to place any new structures on the subject property. No floodplain development permit is required as both the kiosk and building were established on the property when it was mapped as Zone X. There are no streams, rivers, wetlands or riparian areas on the subject property.

Finding #1 - The subject property appears suitable for the proposed use because there is no applicable lot coverage, the kiosk and the building will meet setbacks, adequate access exists, and even though the property is located within the floodplain no new structures will be constructed on the property.

B. Appropriateness of design

i. Parking scheme

The kiosk is 10 feet 3 inches wide by 16 feet long with a total area of 164 square feet and can best be classified as retail or personal service stores per the parking requirements [FCZR]. Retail or personal service stores require 1 space per 300 square feet, for a total of 1 additional parking space. The building is approximately 94,858 square feet and would require a total of 316 parking spaces, based on the 1 space per 300 square feet required for retail spaces, per Section 6.09.010 [FCZR].

The property currently contains 575 parking spaces on the subject property. The proposed parking appears adequate to accommodate the multiple principal uses based on the size of the buildings and current parking spaces available. The parking lot is currently demarcated and appears to conform to the standards for demarcation of permanent parking spaces in a paved parking lot.

ii. Traffic circulation

Access to the subject property is via three separate ingress and egress points. As previously stated, the property is built-out with a paved parking lot. The driving aisles are wide enough to accommodate two-way traffic. The parking lot has demarcated spaces and contains angled parking with one-way traffic aisles between the rows. The application states, traffic circulation “will be unimpeded as the kiosk is located in a very large parking lot.” The existing access and circulation onsite would be adequate because the kiosk is not located in an area that would obstruct circulation.

Finding #2 – The estimated parking and traffic circulation is sufficient for the proposed kiosk due to the fact that the property is able to accommodate the required minimum number of parking spaces, the approaches are adequately sized for the proposed use and the driving aisles meet the applicable standards.

iii. Open space

The footprint of the existing building is approximately 94,858 square feet. The kiosk that was placed on the site for the temporary use permit has a footprint of 164 square feet. The total area of the lot is approximately 370,260 square feet. The existing building and kiosk cover about 24.5% of the lot. Within the B-3 zone permitted lot coverage is not applicable, therefore the building, parking lot and kiosk would allow for adequate open space on the subject property.

iv. Fencing/screening

Section 5.05.010 FCZR states, “All sites in a commercial (“B” and “BR” designations) district having a common boundary with a residential district (“R”, “RA”, or “RC” designation) shall erect and maintain a view-obscuring fence or dense coniferous hedge along such common boundary. Fences shall be six (6) feet high. Hedges shall obtain a height of at least six (6) feet within three (3) years. Where the wall of a building is on such common boundary, no separate wall, fence, or hedge is required along the portion of the common boundary occupied by the building.” A six foot chain link fence covered in vines is located in the rear of the property adjacent to a residential district. There is also a fence located on the property in the southwest corner of the parking lot. The applicant is not proposing to construct any additional fencing or screening on the subject property for the proposed use and no additional fencing is required.

v. Landscaping

There appears to be minimal landscaping on the subject property with a tree in the southwest corner of the property near the access off Highway 2 and a line of trees on the west side of the property adjacent to the residential zone. During the site visit staff was unable to determine if the trees were on the subject property. These trees provide for screening between the commercial and residential designations. No additional landscaping is being proposed by the applicant and no additional landscaping is required.

vi. Signage

The property currently has several signs including free standing, and wall signs on both the kiosk and the big box store. The kiosk has a wall mounted sign on all four sides of the building; there is a free standing sign in the parking lot for the big box stores as well as four wall signs on the building. The signage complies with all applicable signage regulations found in Section 5.11 FCZR.

vii. Lighting

Outdoor lighting is currently located within the parking lot and on the side of the building. The parking lot lights are on poles with one, two or four lights atop and positioned throughout the parking lot. All the lights in the parking lot appear to be arranged to reflect light away from adjacent residential uses and the lights on the building appear to be aimed downward. The applicant is proposing to continue to use the exterior lighting in the parking lot.

No additional lighting has been proposed by the applicant, and no additional lighting is required. All lighting on the property appears to comply with Section 5.12 of the Flathead County Zoning Regulations regarding yard, street, and security lighting.

Finding #3 – The proposed use is appropriate for the subject property because B-3 has no applicable lot coverage, the building’s signage will comply with the Flathead County Zoning Regulations, the building will have no exterior lighting, and no additional fencing/screening or landscaping beyond conditions currently present onsite would be required.

C. Availability of Public Services and Facilities

i. Sewer

The subject property is located within the service area of the Evergreen Water and Sewer District, and the retail use is currently served by the district. No sewer service is required for the kiosk, as it will be unmanned. The Evergreen Water and Sewer District provided comment on the proposed use stating, “They do not want to connect to our water or sewer and the location of the kiosk poses no problem for us.”

Comments received from the Flathead City-County Health Department state “As proposed, the proposal would require no additional review. Should the kiosk change to a structure, this development would require further review through the Sanitation in Subdivisions Act. The parcel has an existing Certificate of Subdivision Approval (EQ# 01-2217) for one (1) commercial building. We have no comments at this time as proposed development will not affect water, wastewater, or storm water drainage on this property.”

ii. Water

The subject property is located within the service area of the Evergreen Water and Sewer District, and the retail use is currently served by the district. No water service is required for the kiosk, as it will be unmanned. The Evergreen Water and Sewer District provided comment on the proposed use stating, “They do not want to connect to our water or sewer and the location of the kiosk poses no problem for us.”

Comments received from the Flathead City-County Health Department state “As proposed, the proposal would require no additional review. Should the kiosk change to a structure, this development would require further review through the Sanitation in Subdivisions Act. The parcel has an existing Certificate of Subdivision Approval (EQ# 01-2217) for one (1) commercial building. We have no comments at this time as proposed development will not affect water, wastewater, or storm water drainage on this property.”

iii. Storm Water Drainage

The applicant is not proposing any additional storm water drainage facilities on the subject property. No impervious surface will be added to the property as a result of this proposal because no new construction is being proposed and the kiosk is on a paved area. The existing storm drainage system on the property would likely not be impacted by the proposed multiple uses.

Comments received from the Flathead City-County Health Department state, “As proposed, the proposal would require no additional review. Should the kiosk change to a structure, this development would require further review through the Sanitation in Subdivisions Act. The parcel has an existing Certificate of Subdivision Approval (EQ# 01-2217) for one (1) commercial building. We have no comments at this time as proposed development will not affect water, wastewater, or storm water drainage on this property.”

Finding #4 – Water and sewer services and storm drainage appear adequate because the use will have no need for additional public water and sewer and the use is not adding impervious surfaces.

iv. Fire Protection

The subject property is served by the Evergreen Fire Department, and is located approximately nine-tenths of a mile north of an existing fire station. Due to the close proximity to the fire station, it is anticipated response times in the event of an emergency would be reasonable.

v. Police Protection

The property would be served by the Flathead County Sheriff's Department. It is anticipated response times in emergency would not be unreasonably long given the property's proximity to an urban, developed area of the County.

vi. Streets

The property is located at the corner of U.S. Highway 2 and Montana Highway 35 with direct access to Highway 2 on two sides of the property. Highway 2 is maintained by Montana Department of Transportation, and is a paved four lane highway with a center median. Highway 2 varies in width from 60 to 92 feet and the right-of-way is 100 to 127 feet wide in front of the subject property. Comments received from MDT indicate no concern with this proposal.

Finding #5 – Fire and police protection and the streets appear adequate for the proposed use because the response time of police and fire protection appears adequate and the property is located on U.S. Highway 2.

D. Immediate Neighborhood Impact

i. Excessive traffic generation

The kiosk will be unmanned a majority of the time, except during tourist season and used for informational purposes, it is anticipated the amount of vehicle trips per day would be minimal. The Institute of Transportation Engineers Trip Generation Manual (5th Addition) does not list a visitors center, or any use that is sufficiently similar.

The Institute of Transportation Engineers Trip Generation Manual (5th Addition) provides average daily traffic for a discount store which would be sufficiently similar to the existing big box store. A discount store is anticipated to generate an average 70.13 trips per day per 1,000 square feet gross floor area. The footprint of the existing building is approximately 94,858 square feet. This would translate to 6,652 average vehicle trips per day. However, given the location adjacent to U.S. Highway 2, the fact that the use has existed on the property previously, MDT has no concerns, the kiosk is seasonal and impacts during the administrative conditional use permit have been minimal, it is not anticipated that traffic generated by the multiple principal uses would have adverse effects on the immediate neighborhood.

ii. Noise or vibration

The applicant is not proposing any new construction as all the buildings and structures currently exist. Therefore, no noise or vibration will result from

construction activities. The proposed multiple principal uses will produce minimal audible noise and vibration and it is not anticipated that the noise will have any impact on the surrounding neighborhood given the nature of the use.

iii. Dust, glare or heat

Based on the submitted application the proposed multiple principal uses are not anticipated to create adverse impacts on the surrounding neighborhood as a result of dust. Increased impervious surface area and windows do have the potential to increase the impacts of glare and heat on the subject property as well as surrounding area. However, these impacts currently exist on the property as the parking lot is currently paved and no new structures will be constructed as a result of this request.

iv. Smoke, fumes, gas, or odors

No smoke, fumes, gas or other odors are anticipated to be generated by the proposed use other than those typical of a commercial business.

v. Inappropriate hours of operation

The current business hours for the big box store are from 8:00 AM to 10:00 PM seven days a week and would not change. According to the applicant the kiosk will be limited to daylight hours. It appears likely that the hours of operation would be similar to other business located in the area and would not be inappropriate due to prevailing similar uses in the vicinity.

Finding #6 – The proposed use is not anticipated to have a negative impact on the immediate neighborhood because no new traffic would be generated, the traffic currently generated is handled by U.S. Highway 2, the use is not anticipated to create any additional noise, vibration, dust, glare, heat, smoke, fumes, gas, or odors, and the hours of operation would be similar to other businesses in the area.

V. SUMMARY OF FINDINGS

1. The subject property appears suitable for the proposed use because there is no applicable lot coverage, the kiosk and the building will meet setbacks, adequate access exists, and even though the property is located within the floodplain no new structures will be constructed on the property.
2. The estimated parking and traffic circulation is sufficient for the proposed kiosk due to the fact that the property is able to accommodate the required minimum number of parking spaces, the approaches are adequately sized for the proposed use and the driving aisles meet the applicable standards.
3. The proposed use is appropriate for the subject property because B-3 has no applicable lot coverage, the building's signage will comply with the Fathead County Zoning Regulations, the building will have no exterior lighting, and no additional fencing/screening or landscaping beyond conditions currently present onsite would be required.

4. Water and sewer services and storm drainage appear adequate because the use will have no need for additional public water and sewer and the use is not adding impervious surfaces.
5. Fire and police protection and the streets appear adequate for the proposed use because the response time of police and fire protection appears adequate and the property is located on U.S. Highway 2.
6. The proposed use is not anticipated to have a negative impact on the immediate neighborhood because no new traffic would be generated, the traffic currently generated is handled by U.S. Highway 2, the use is not anticipated to create any additional noise, vibration, dust, glare, heat, smoke, fumes, gas, or odors, and the hours of operation would be similar to other businesses in the area.

VI. CONCLUSION

Upon review of this application, the request to allow for a multiple principal uses on a single lot is generally supported by the review criteria and the Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-14-04 as Findings of Fact and approve the conditional use permit, the following Conditions would ensure compliance with the review criteria and appropriate measures to mitigate impacts:

VII. CONDITIONS

1. Operation of the proposed use on the subject property shall be in substantial conformance with the application materials and site plan as submitted and approved by the Board of Adjustment and modified by the conditions below [FCZR Section 2.06.010].
2. Changes or modifications to the approved use or the site plan shall not be affected unless specifically approved in writing by the Flathead County Board of Adjustment [FCZR Section(s) 2.06.010 and 2.06.020].
3. The approved use shall conform to the applicable setback requirements of the B-3 zoning district pursuant to Section 3.16.030 of the Flathead County Zoning Regulations.
4. All signage on the subject property shall comply with all applicable standards and guidelines set forth under Section 5.11 and 3.42.050(4) of the Flathead County Zoning Regulations.
5. All lighting on the subject property shall adhere to the performance standards set forth in Section 5.12 of the Flathead County Zoning Regulations.
6. The construction of the building shall commence within one year from the date of issuance of the permit. The permit may be extended for one additional year if the permittee requests additional time prior to expiration date [FZR Section 2.06.060].
7. At the end of twelve (12) months from the date of authorization of this permit staff will inspect to verify compliance [FZCR Section 2.06.060].

Planner: EKM